STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**:**	
On Its Own Motion	**:**	
	:	
Investigation concerning Illinois Bell	**:**	**Docket No. 01-0662**
Telephone Company's compliance	**:**	
with Section 271 of the	**:**	
Telecommunications Act of 1996	**:**	

STAFF'S CLARIFICATIONS OF STATEMENTS IN
SBC ILLINOIS RESPONSE TO STAFF COMMENTS ON REMEDY PLAN

NOW COMES the Staff of the Illinois Commerce Commission (hereafter "Staff") by and through its counsel, pursuant to Section 200.800 of the Rules of Practice before the Commission, 83 Ill. Admin. Code 200.800, and pursuant to ALJ's direction, files this Reply to the SBC Illinois' (hereafter "SBCI") *Response of SBC Illinois to Staff's Motion to Take Administrative Notice of the Record of Docket No. 01-0120 and SBC Illinois' Motion in Opposition to Staff's Proposed Revisions to Exhibit 41.0*. In reply thereof, Staff states the following:

1. On March 17, 2003 Staff filed *Comments of the Staff of the Illinois Commerce Commission*, and on March 25, 2003, SBC Illinois ("SBCI") filed *SBC Illinois' Response to Staff Comments on Remedy Plan* ("SBCI Response"). After reviewing SBCI's Response, Staff has found six statements that are incorrect, or inaccurate, and sets forth below its position or clarification of those statements.

2. On page 8 of SBCI's Response, under its "Fourth" point, SBCI incorrectly states that "Staff proposes that the Commission hold another proceeding on remedy plans under Part 731 in lieu of the one already conducted here." Staff has not made such a proposal, and SBCI provided no cite to Staff's Comments so it is unclear as to what statements misled them.

3. Footnote 2, on page 9 of SBCI's Response, states that Staff erroneously portrays the SBC11state and SBC13state plans as being "separate and different". The plans are separate and different. SBCI witness James Ehr stated in Ill. C.C. Docket No. 02-0654 (Testimony of Mr. James Ehr, November 13, 2002, hearing, Tr. pp. 163-4, 184. and 190-1) that the SBC13state plan is the predecessor to the SBC11state plan. Subsequent to that, in Docket 03-0074, SBCI acknowledged that they are two separate plans, since SBCI was asked the following question in a data response and provided the following response:

> Q: In view of the testimony in Ill.C.C. Docket No. 02-0654 {Testimony of Mr. James Ehr, November 13, 2002, hearing, Tr. pp. 163-4, 184. and 190-1} that the 13State Remedy Plan is the predecessor of the 11State Plan and that the 13State Remedy Plan is not a plan currently being offered in Illinois, does SBC now intend to offer the 13State Plan in competition with, or in replacement of, the 11State Plan?
>
> R: SBC Illinois objects to this request on the ground that it is vague and ambiguous, in that the meaning of the phrase "in competition with" is unclear. Notwithstanding this objection and without waiving it, SBC Illinois states that it currently offers the 11-State Remedy Plan in Illinois. Nevertheless, a CLEC has the ability under 47 U.S.C. § 252(i) to adopt the terms of certain existing interconnection

> agreements between SBC Illinois and another carrier, and some of those agreements contain the 13-State Plan.
>
> See Attachment A, SBCI Response to Staff Data Request 13.0 in Docket 03-0074.

Additionally, the plans use a different table of critical values (compare Attachment B -- SBC13state plan §9 at 9, to Attachment C – SBC11state plan §8 at 9), and use different formulas (see Attachment A, SBCI Response to Staff Data Request Response #14 in Docket 03-0074). Moreover, the SBC13state plan actually attached a list of the PMs upon which it makes payments (Attachment B -- SBC13state plan §14), whereas the SBC11state plan cross references the PMs approved by the FCC (Attachment C – SBC11state plan at §13.1). For these reasons it is clear that the plans are indeed different.

4. On page 9 of its Response, SBCI entitled its section II as "Staff's Proposal to Retroactively Amend Tier 2 Payments. . .". Staff's intent is not to amend the payments SBCI has already made to the Commission, but that SBCI is to commit to applying the Tier 2 payment methodology approved in this docket to all remedy plans, and all carriers, going forward from some set date.

5. On page 11 of its Response, SBCI states that Staff's proposal to operate only one Tier 2 payment methodology for all carriers and all remedy plans would require them to amend CLEC agreements. SBCI's response overstates the number of interconnection agreements that would need to be amended if Staff's proposal is adopted. In Staff's Comments, Staff stated: "This commitment would apply to, but not require SBCI to amend, those interconnection agreements that contain either the

SBC11state or SBC13state plan." It was Staff's intent that those interconnection agreement's would not need to be revised, since they do not include a Tier 2 or incorporate by reference a Tier 2 calculation methodology.[1] Only the interconnection agreements with the Texas Remedy Plan (23 interconnection agreements) would need to be amended, and, if the Commission approved a Tier 2 methodology other than the one in the Commission-ordered Remedy plan, the interconnection agreements with the Commission-ordered remedy plan would need to be amended (20 interconnection agreements). Otherwise, it is Staff's intent that the Commission would rely upon SBCI's commitment to implement only one Tier 2 calculation methodology for the remaining interconnection agreements (123 interconnection agreements, or 143 interconnection agreements if the Commission-ordered remedy plan Tier 2 methodology is accepted). As new interconnection agreements are negotiated the Tier 2 calculation methodology can be inserted.

6. On pages 11-12 of its Response, SBCI attempts to explain Staff's statement relating to the SBCI plan-- "as SBCI performance gets worse, Tier 2 payments will not increase." SBCI states the following in its response:

> What Staff means is that the amount of <u>each</u> payment will not increase – in other words, that Tier 2 payments would not be "indexed" to overall performance the way Tier 1 payments would be. But that is equally true of the 0120 Plan, which does not index payments for Tier 1 <u>or</u> Tier 2.
>
> SBCI Response at 11-12.

SBCI's explanation of Staff's argument is wrong. The rationale behind Staff's

[1] Although SBCI makes Tier 2 payments for those carriers and those plans based on the Tier 2 included in the Commission-ordered remedy plan.

statement is that the 01-0120 remedy plan's tier 2 payments are dependent on the PM weighting (a high weighting representing a PM that is significant from the standpoint of competition, conversely a low weighting representing a PM that is not as significant from the standpoint of competition), whereas, the SBCI plan does not weight its PMs. Therefore, the SBCI plan does not account for differences in the level of importance between PMs. Although a failure of one PM does not cause the same amount of harm as the failure of a different PM, SBC's plan does not differentiate between these failures and allocates the same payments for each and every failure. As stated in ICC Staff Exh. 39.0 ¶67 –

> For Tier 2 performance failures, the SBCI-proposed remedy plan provides for level remedy payments even if overall performance degraded to a 'serious' level. Further, the SBCI-proposed remedy plan fails to distinguish between very serious, system-affecting Tier 2 failures, while the Commission-ordered remedy plan recognizes that certain performance failures, measurable only at a system-wide level and carrying the designation of "high" importance, would impact competition severely. The Commission-ordered remedy plan recognizes those competition-affecting failures by requiring higher remedy amounts.

Therefore, Staff 's position is that the Tier 2 payments under the SBCI plan will not increase due to the lack of PM weighting, and not due to the explanation provided by SBCI.

7. On page 13 of its Response, SBCI takes the quote Staff uses from the Commission order in Docket 01-0120 out of context. In its Comments Staff stated:

> Furthermore, the Commission determined that, "having an audit only if an undefined 'problem' is discovered,

> encourages dilatory or less than forthright conduct on the part of [SBCI].”
>
> Staff Comments at 10 (citing Order, Docket 01-0120 at 14).

SBCI states: “Staff’s suggestion that the Commission Plan ’removes the annual audit provision from the Commission-ordered remedy plan’ makes it sound as if though SBC Illinois is planning to do away with audits and engage in ‘dilatory or less than forthright conduct’ (id.).” The quote relied upon by Staff is from the Commission's order in docket 01-0120 in which the Commission discusses its concern about SBCI’s conducting audits only when undefined problems are identified. The quote was used to address SBCI's proposal that a regional audit can be requested "periodically" as requested by the Commission, but only 18 months after the conclusion of the KPMG audit. SBCI’s characterization of this quote is inaccurate.. See Ehr Affidavit, Attachment Z, §6.6.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that the ALJ and Commission note the above explanations in its analysis and resolution of the corresponding issues.

Respectfully Submitted,

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